

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

ESAYAS KEBEDOM YOHANNES,

Plaintiff,

v.

JOEL MARTINEZ,

Defendant.

Case No. [16-cv-04979-JD](#)

**ORDER GRANTING MOTION TO  
STAY AND  
ADMINISTRATIVELY CLOSING  
CASE**

Re: Dkt. Nos. 2, 4

Esayas Kebedom Yohannes, a California prisoner, filed a pro se petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 and a motion to stay to exhaust further claims. He also applied for leave to proceed in forma pauperis. Petitioner was convicted in Alameda County, which is in this district, so venue is proper here. *See* 28 U.S.C. § 2241(d).

Petitioner has filed a motion for a stay of this action so that he may exhaust state court remedies for four claims<sup>1</sup> in his habeas petition that he wishes to present to this Court. The Court grants the motion to stay. Liberally construing the motion, petitioner has shown good cause for his failure to exhaust the claims before filing this action, the claims do not appear patently meritless, and there does not appear to be any intentionally dilatory litigation tactic by petitioner. *See Rhines v. Weber*, 544 U.S. 269, 277-78 (2005). Petitioner is informed that before he may challenge either the fact or length of his confinement in a habeas petition in this court, he must present to the California Supreme Court any claims he wishes to raise in this Court. *See Rose v. Lundy*, 455 U.S. 509, 522 (1982) (holding every claim raised in federal habeas petition must be exhausted).

<sup>1</sup> Claims six thru nine in the petition. Docket No. 1

**CONCLUSION**

1. Petitioner's motion to proceed in forma pauperis (Docket No. 4) is **GRANTED**.

2. Petitioner's motion for a stay (Docket No. 2) is **GRANTED** and this case is **STAYED** to allow petitioner to present his unexhausted claims in state court. If petitioner is not granted relief in state court, he may return to this Court and ask that the stay be lifted.

3. The stay is subject to the following conditions:

(1) Petitioner must diligently pursue his state court habeas proceedings; and

(2) Petitioner must notify this Court within thirty days after the state courts have completed their review of his claim or after they have refused review of his claims.

If either condition of the stay is not satisfied, this Court may vacate the stay and act on this petition. *See Rhines*, 544 U.S. at 278 (district court must effectuate timeliness concerns of AEDPA by placing "reasonable limits on a petitioner's trip to state court and back.").

The Clerk shall administratively close this case. The closure has no legal effect; it is purely a statistical matter. The case will be reopened and the stay vacated upon notification by petitioner in accordance with section (3) above.

**IT IS SO ORDERED.**

Dated: September 29, 2016

  
\_\_\_\_\_  
JAMES DONATO  
United States District Judge

UNITED STATES DISTRICT COURT  
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Plaintiff,  
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**CERTIFICATE OF SERVICE**

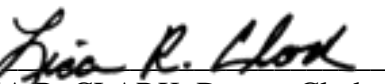
I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on September 29, 2016, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Esayas Kebedom Yohannes ID: AH2309  
Sierra Conservation Center  
5150 O'Byrnes Ferry Rd.  
5C-144  
Jamestown, CA 95327

Dated: September 29, 2016

Susan Y. Soong  
Clerk, United States District Court

By:   
LISA R. CLARK, Deputy Clerk to the  
Honorable JAMES DONATO